

A company had no duty to file for a sales tax refund on behalf of a customer who has erroneously paid the sales tax. (This is a GIL.)

August 30, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 2, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See, 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

We had a customer who requested a refund of Illinois sales tax totaling \$31,500.18 charged on 50 separate invoices issued by two different entities 27 to 33 months prior. At the time of the sale, the customer did not present any documentation supporting a sales tax exemption. Both of our entities charged the Illinois sales tax and remitted it to the state during the months the invoices were issued; the customer remitted the sales tax to us at a later date when paying the invoices. The customer now advised that during an Illinois audit of their site, it was determined that the purchases from our two companies should have been tax exempt; hence, they were pursuing this refund from us.

Unfortunately, their refund request arrived at a time when our company was experiencing major organizational changes, including two separate mergers and unprecedented staff resignations. Because of our situation, by the time we were able to apply to the State of Illinois for these refunds, the statute of limitations had expired and our refund requests were denied. In the meantime, our customer had become impatient waiting for their refund, so they held back payment of products from current invoices by this \$31,500.18, claiming we owed them this money. To date, they have refused to pay us this \$31,500.18.

While working on the amended returns that we filed in our attempt to secure a refund from the State of Illinois, I spoke with Illinois Revenue Tax Specialist NAME who advised me that we did not have to honor our customer's request for the sales tax refund since they failed to provide proper documentation at the time of sale. Our question for which we seek a response from the Illinois Legal Division is as follows: Is a company who collected Illinois sales tax and remitted it to the State of Illinois in accordance with Illinois statute required to refund such sales tax at a later date to customers who failed to provide the proper sales tax exemption documentation at the time of sale?

Thank you for your courteous attention. Your soonest response would be appreciated.

If a taxpayer pays an amount of tax under the Retailers' Occupation Tax Act that is not due, either as a result of a mistake of fact or an error of law, the taxpayer may file a claim for credit with the Department. Only the persons remitting tax to the Department are authorized to file such claims. No credit shall be given the taxpayer unless the taxpayer shows that it has borne the burden of tax or has unconditionally repaid the amount of the tax to the customer from whom it was collected. See 86 Ill. Adm. Code 130.1501. The claims for credit must be prepared and filed upon forms provided by the Department containing the information listed in Section 130.1501(b).

Under Illinois sales tax laws, retailers are not required to file claims for credit. Further, the Department has no authority to compel sellers to file a claim for credit. Whether or not sellers refund the taxes paid and file claims for credit with the Department is a private matter between sellers and purchasers.

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Shane McCreery

By:

Jerilynn T. Gorden

Senior Counsel – Sales and Excise Taxes

SM:JTG:msk